

Appl. No. 10/753,669
Docket No. 7537CQ
Amdt. dated July 1, 2010
Reply to Office Action mailed on April 1, 2010
Customer No. 27752

REMARKS

Claim Status

Claims 1, 3-7, 9-11, 15-41, 43-45 and 47-52 are pending in the present application. No additional claims fee is believed to be due.

Claims 1, 9, 40 and 47 are amended.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 USC §103(a) over Everhart et al.

Claims 1, 3-7, 9-11, 15-19, 21-25, 36-39, and 40, 41, 43-45, and 47-52 stand rejected under 35 U.S.C. §103(a) over Everhart et al. (U.S. Pat. No. 5,468,236). Applicants respectfully request reconsideration and withdrawal of the rejection.

Under MPEP §2142, the Office bears the burden of factually supporting an asserted *prima facie* conclusion of obviousness. In determining the differences between the cited art and the claims, the question is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *See, e.g., Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1537; 218 U.S.P.Q. 871 (Fed. Cir. 1983). If the Office does not demonstrate *prima facie* unpatentability, then without more, the Applicant is entitled to the grant of the patent. *See In re Oetiker*, 977 F.2d 1443, 1445; 24 U.S.P.Q.2d 1443 (Fed. Cir. 1992).

To establish a *prima facie* case of obviousness under 35 U.S.C. §103, the Office must show that all of the claim elements are taught or suggested in the prior art. *See, e.g., CFMT, Inc. v. Yieldup Int'l Corp.*, 349 F.3d 1333, 1342; 68 U.S.P.Q.2d 1940 (Fed. Cir. 2003).

Independent Claims 1 and 40, as amended, each recite a disposable article to be fitted to a wearer comprising, *inter alia*, a biosensor including at least one biologically reactive bio-

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recognition element comprising a biologically derived material and adapted to detect or interact selectively with a specific microorganism selected from the group consisting of pathogenic bacteria, colonic bacteria, viruses, parasites and fungi. By dependency, each of the remaining claims includes these elements.

As best understood by Applicants, Everhart et al. does not teach or suggest a biosensor having the characteristics recited by the independent claims. Without waiving any other arguments they may have, Applicants note that Everhart et al. does not teach or suggest a biosensor including at least one biologically reactive bio-recognition element, adapted to detect or interact selectively with a specific microorganism.

For this reason, Everhart et al. does not support a *prima facie* conclusion of obviousness of the claims.

Applicants, therefore, respectfully request reconsideration and withdrawal of the rejection.

Rejection Under 35 U.S.C. §103(a) over Everhart et al. and Al-Sabah

Claims 28-35 stand rejected under 35 U.S.C. §103(a) over Everhart et al. (U.S. Pat. No. 5,468,236) in view of Al-Sabah (U.S. Pat. No. 5,868,723).

As submitted above, Applicants believe that Everhart et al. does not teach or suggest all elements of Applicants' independent claims. As best understood by Applicants, Al-Sabah does not teach or suggest the claim elements missing from Everhart et al. For this reason, the combination of Everhart et al. and Al-Sabah does not support a *prima facie* conclusion of obviousness of the claims.

Applicants, therefore, respectfully request reconsideration and withdrawal of the rejection.

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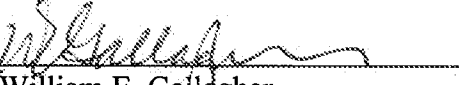
Conclusion

This response represents an earnest effort to place the present application in proper form for allowance. In view of the foregoing, entry of the amendment presented herein, reconsideration of this application, and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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